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6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 JEFFREY E. HOFFMAN,

No. 3:07-CV-2417 MHP

11 Plaintiff,

12 vs.

13 THOMAS R. LLOYD, an individual,  
14 EDWARD L. BLUM, an individual, and  
DOES 1 through 20, inclusive,,  
15

16 Defendants.

17 THOMAS LLOYD,

18 Cross-Plaintiff,

19 vs.

20 JEFFREY E. HOFFMAN, dba H&B  
PROPERTIES; H&B PROPERTIES, LLC;  
21 J. EDWARDS INVESTMENT GROUP,  
INC., and NORCAL FINANCIAL, INC.,  
22

23 Cross-Defendants.

24  
25 **APPELLANT'S EXCERPTS OF RECORD ON APPEAL**

26 **VOLUME II cont.**  
27  
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DATED: July 13, 2007

GOLDBERG, STINNETT, DAVIS & LINCHEY  
A Professional Corporation

By: /s/ Dennis D. Davis  
Attorneys for Appellant Jeffrey E. Hoffman

**DOCUMENT 8 cont.**

*Hoffman - Cross/Goodrich*

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1 mean he wasn't - his feeling is we were already in violation.  
2 That's his feeling. He feels we're already in violation. He's  
3 not - you know, it's kind of like he's not going to ask me to  
4 start producing documents to him, because I wouldn't have done  
5 it probably anyway, to be honest with you. I probably would  
6 have said, 'Okay. Hold on, look, you know, I'm here to settle  
7 this thing.'

8 And that's why, again, pushed for the fact of the -  
9 the discussion was between Tom and myself, and not with him. I  
10 mean because it was this - we were doing a lot of lawyering, you  
11 know. I was trying to get out of that -

12 Q. You wanted - you wanted to keep the discussion just between  
13 you and Tom -

14 A. I'm trying to -

15 Q. - because you could convince Tom to enter into the  
16 settlement more easily than you could convince Mr. Blum?

17 A. More importantly is the fact that I would be able to  
18 probably reach a settlement, not so much convincing him because  
19 of the fact of lack of knowledge, because he certainly is going  
20 to go back, and the one who's going to be instrumental in  
21 drafting this is going to be his attorney.

22 So when the day is done, you know, it's - they both  
23 know. You know, one has told the other one, 'I want to settle.'  
24 The other one is saying, 'Look, this is what - what I think, you  
25 know, we could do relative to moving forward on this thing if

*Hoffman - Cross/Goodrich*

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1 you so desire.' So they're both part and parcel. I mean it's  
2 not like -

3 Q. Were you present that they communications between Mr. Lloyd  
4 and his attorney, Mr. Blum?

5 A. No, I was not.

6 Q. So what you just testified to is not a matter of personal  
7 knowledge?

8 A. It's - I can tell you where the -

9 Q. Just say yes or no.

10 A. Well, it's not a yes or no question. It's an obvious that  
11 it was discussed and bandied around, or he would have not been  
12 able to make those discussions - or relative of those  
13 statements, I should say, with Mr. Lloyd when I met with him  
14 down at - in Fresno.

15 Q. What statements?

16 A. Which is the statement that they can be rescinded, that  
17 there are problems with it, that -

18 Q. So you're assuming whenever the word "rescission" is stated  
19 by Mr. Lloyd, that he's referring to rescission under 1695?

20 A. Since that's what my discussions were prior to that,  
21 absolutely.

22 And whatever - what other reason would Mr. Lloyd have  
23 or of understanding, if you will, of - I don't know, is there  
24 other Civil Code that's available out there for all these types  
25 of things? I don't know.

*Hoffman - Cross/Goodrich*

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1 Q. I'm going to refer to the same deposition, page 79, question  
2 beginning on line 19, this is in the context of the meeting at  
3 Applebee's, "Did Tom discuss with you or did you discuss with  
4 him in that meeting his defenses to your unlawful-detainer  
5 action?

6 "ANSWER: I don't recall, but I don't see him bringing  
7 up his defenses to me, no."

8 A. You're referring to the unlawful detainer. That's different  
9 than what we're talking about now.

10 Q. So you're saying that his defenses in the unlawful detainer  
11 weren't defenses under Section 1695?

12 A. Under our settlement they certainly were.

13 Q. Well, didn't you testify in your deposition that you and Tom  
14 didn't get into any legal discussions about what his defenses  
15 were?

16 A. Not in terms of what one would call legal. I mean certainly  
17 we're not throwing -

18 Q. Well, in what terms then?

19 A. We're not lawyering, if you will. We're talking in generic  
20 terms. I mean he came down there, presumably in good faith as I  
21 went to the table to meet with him, and - and in fact he  
22 obviously did because we had put something together.

23 So, as I say, he had - had weighing on his mind  
24 relative to what his attorney is telling him, which made it  
25 difficult to even get to that point. I don't - in fact, if I'm

*Hoffman - Cross/Goodrich*

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1 not mistaken, I don't think he was - I don't think of Blum or  
2 Blum [pronouncing as "bloom"], I can't remember whichever - how  
3 to pronounce it - was probably very much inclined to want him to  
4 come down and meet with me personally without -

5 Q. Why do you say that?

6 A. Just because of the fact, again as I say, he felt very  
7 strongly on the issue of being able to unwind this.

8 Q. But other than the word "rescission," you're saying Mr.  
9 Lloyd said he thought he could rescind it?

10 A. Rescind, unwind. You know, all's I know -

11 Q. There was no -

12 A. All's I know is they mean bad things to me, as - yeah.

13 Q. But there was no discussion of any failure to provide notice  
14 under 1695?

15 A. State that -

16 Q. In your discussion with Mr. Lloyd at Applebee's, you didn't  
17 discuss with him the theory that this could be unwound under  
18 Section 1695?

19 A. The emphasis of our conversation was settlement, not  
20 bantering around -

21 Q. So the answer's no -

22 A. He didn't come down - he's not threatening me. He's not  
23 come down to threaten me. We're trying to cut a deal. So he's  
24 not sitting here saying, 'Although I want you to be aware of  
25 what I could do.' He's just telling me what his attorney is



*Hoffman - Cross/Goodrich*

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1 telling him, so.

2 Q. So the answer is no?

3 A. No, I don't think I said no. I say he's relating - and as  
4 far as specifically stating 1695, I'd have to say, you know, I  
5 can't recall specifically a number being bandied around. And,  
6 you know, I would be very - I would have to almost make an  
7 assumption that would probably be unlikely that numbers would be  
8 bandied around, so.

9 Q. Isn't it fair to say that you don't have any specific  
10 recollection of anything that was discussed other than the idea  
11 of settlement and an actual settlement structure at Applebee's  
12 that day?

13 A. Isn't that what I've already stating?

14 Q. Okay. In the settlement agreement itself you indicated that  
15 there was a reference to what you believe to be Tom's claims  
16 under Section 1695. And that's - and that's Item G. Filed an  
17 answer claiming *inter alia* that the sales transaction was a  
18 disguised security device and therefore unenforceable.

19 Now you had a lawyer who represented you in the  
20 unlawful-detainer action, correct?

21 A. That's correct.

22 Q. And you a separate lawyer representing you in drafting the  
23 settlement agreement, correct?

24 A. Yes.

25 Q. And you have been a party to many cases in litigation over

*Hoffman - Cross/Goodrich*

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1 the years as a real estate investor and developer, correct?

2 A. No, I haven't.

3 Q. Well, you've had your deposition taken at least ten times,  
4 correct?

5 A. Oh, no. No, no, no, no. I never said ten times. And if I  
6 did, I'll tell you what, I was sadly mistaken. No.

7 Q. Let's see. Okay. This is from the same transcript, page 5,  
8 line 12, "Have you had your deposition taken before?"

9 "ANSWER: Yes.

10 "QUESTION: How many occasions?

11 "ANSWER: I don't know how many.

12 "QUESTION: More than ten?

13 "ANSWER: More than ten."

14 A. If you recall during the depositions, one of the things that  
15 you liked to do is throw numbers at things. And you would go,  
16 'Is it less than ten or greater than ten.'

17 And I had - in fact, I even made comment, if you  
18 continue to read through the transcripts, I had laughingly made  
19 jokes, I said, "Well, I don't know. Throw 'ten' at it," because  
20 it was a number that you liked. And I made the joke to you, I  
21 said, "I don't - you know, five, ten, whatever, you know, I  
22 don't know."

23 I do know that it has not been that many, no.

24 Q. Did you think that the deposition was a joke when you took  
25 it?

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1 A. I don't consider it as such, no.

2 Q. Didn't I tell you that the answers were just like the  
3 answers you're supposed to be giving in court?

4 A. That's correct.

5 Q. And wasn't this question one of my first questions in this  
6 deposition on the first day of your deposition?

7 A. Okay.

8 Q. So didn't you give a serious answer, not a joking answer at  
9 that point?

10 A. No, I gave - I gave a serious answer.

11 Q. Okay.

12 A. Yeah. But -

13 Q. So you have had your deposition taken more than ten times?

14 A. I would have to recant that and say, no, I don't believe I  
15 have. I don't believe that at all. I'd have to go back -

16 Q. Well, let's -

17 A. - and - and redo it.

18 Q. Let's go back to the settlement agreement. In the  
19 settlement agreement you understood that Mr. Blum was raising  
20 issues under Section 1695, correct, that's what your testimony  
21 is?

22 A. Correct.

23 Q. And that at that point you knew the provisions of Section  
24 1695, correct?

25 A. Correct.

*Hoffman - Cross/Goodrich*

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1 Q. You had reviewed it not only personally but with counsel,  
2 correct?

3 A. Correct.

4 Q. And you were concerned that this transaction could be set  
5 aside for a possible violation of Section 1695, correct?

6 A. It was possible.

7 Q. And it sounds like you don't care much for lawyers. You  
8 like to do things directly with people, but you've hired lawyers  
9 to make sure that your rights are protected, correct?

10 A. I try to avoid this.

11 Q. Okay. And you read the settlement agreement before signing  
12 it, correct?

13 A. Correct.

14 Q. And yet you made no effort to indicate that among the claims  
15 being released were claims arising under Section 1695, correct?

16 A. My understanding of settlement agreements has always been  
17 that 1542 provided for any and all such claims regardless of  
18 wherever they fell under whatever code section they may be.  
19 That it -- you're stating to each other that no matter what it  
20 is, past, future, present, wherever, that we're waiving all  
21 this. We're no longer going to fight, no matter what.

22 Q. Okay.

23 A. We're done.

24 Q. So your view of the settlement is that both party -- both  
25 parties were releasing themselves from any claims known or

*Hoffman - Cross/Goodrich*

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1 unknown, whether specifically referenced in the agreement or  
2 not?

3 A. Correct.

4 Q. Well, how about your claim for a management fee that you  
5 made after the settlement agreement, a \$45,000 management fee  
6 that you requested and demanded be paid for Mr. Lloyd to  
7 exercise his repurchase rights?

8 MR. PAHL: I'm going to object. I think we're going  
9 right back into the other issue which I don't think is relevant  
10 here. That would be -

11 THE COURT: I don't think it's really helpful. Let's  
12 keep going.

13 MR. GOODRICH: If I could along the lines, Your  
14 Honor,...

15 BY MR. GOODRICH:

16 Q. But you understood, your belief was that your claims for a  
17 management fee were not being released, correct?

18 MR. PAHL: I'm going object again, Your Honor. The  
19 document speaks for itself. And that would be parol evidence in  
20 order to vary the terms of the settlement agreement. If they're  
21 excluded, they're excluded. If they're not, they're not. But  
22 that's not at issue in this matter.

23 MR. GOODRICH: Well, this witness says that on the one  
24 hand Mr. Lloyd's waiving all his claims and on the other I'm  
25 trying to show -

*Hoffman - Cross/Goodrich*

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1 THE COURT: You know, I don't think we -- given what I  
2 ruled on the summary judgment, I think we're talking about what  
3 was actually said between the parties.

4 MR. GOODRICH: Okay. Okay.

5 THE COURT: I don't --

6 MR. GOODRICH: So we're not getting at this stage  
7 into --

8 THE COURT: It's not subjective intent that's at all  
9 relevant here, --

10 MR. GOODRICH: Right.

11 THE COURT: -- what was discussed between the parties.

12 BY MR. GOODRICH:

13 Q. Mr. Blum never asked you for a copy of the purchase  
14 agreement prior to executing the settlement agreement, correct?

15 A. I don't believe Mr. Blum ever asked me for any documents.

16 Q. Okay. So that includes the -- he didn't ask for the option  
17 agreement?

18 A. He had all that.

19 Q. How do you know?

20 A. Well, -- okay. I'll step backwards on that. No, I did not  
21 see Lloyd hand it to him, so I do not know.

22 Q. You don't know if he had the purchase agreement, the option  
23 agreement, or the lease at the time he was discussing any of  
24 these things with you?

25 A. I presumed he did.

*Hoffman - Cross/Goodrich*

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1 Q. But you don't know?

2 A. I can't swear to it because, as I say, I never had even met  
3 the two.

4 Q. And you didn't provide any of these documents to him before  
5 executing the settlement agreement?

6 A. To Mr. Blum?

7 Q. Correct.

8 A. That would - correct.

9 Q. In describing your meeting with Mr. Lloyd at Applebee's, you  
10 testified on direct that you and Tom were tired of the battles  
11 back and forth; do you remember that testimony?

12 A. Yes.

13 Q. What battles were your referring to?

14 A. The going back and forth. I mean obviously they were  
15 contesting even the possession of property.

16 Q. Well, the battle would be the complaint and the answer,  
17 right?

18 A. Right. Right.

19 Q. Was there any discovery in the unlawful-detainer action,  
20 meaning any demands for documents, any depositions taken?

21 A. Not to my knowledge, no.

22 Q. So the battle really was the fact that you tried to evict  
23 him and Tom was defending himself? That's the battle that you  
24 were referring to?

25 A. That battle as well as the battle being held above my head

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1 as a veiled potential problem.

2 Q. And I think you testified that Mr. Lloyd was unsure of  
3 whether Mr. Blum was correct in believing it could be unwound;  
4 is that your testimony?

5 A. I'm sorry. Could you state that again?

6 Q. I believe you testified that in discussing this issue with  
7 Lloyd, he was unsure about whether Mr. Blum was correct, that  
8 the transaction could be set aside?

9 A. Well, I don't know if he -- well, again, I don't know if he  
10 was -- if he could necessarily say that he was unsure. It was  
11 more or less really the standpoint of, you know, not wanting to  
12 go down that path. I have no idea what's been transpiring, you  
13 know, in his mind for the 12-plus months prior to this, when we  
14 first entered into the agreement. You know, I don't know what's  
15 going on. But I would imagine he's tired at this point and  
16 saying, 'You know what, I'll take -- I get one more crack at the  
17 apple and let's do it.'

18 Q. Did you tell him at Applebee's that he had a right to  
19 rescind the transaction?

20 A. I -- well, I would have to doubt seriously I stated that,  
21 yes.

22 Q. Now you say that you gave him 90 days to buy the property  
23 back under the terms of the settlement agreement, but you didn't  
24 feel you had to provide the 90 days. Why is that?

25 A. Well, I felt it was a material -- this thing was such a



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1 significant breach that it was way outside the bounds of -- I  
2 mean it went -- it was above and beyond what I think most  
3 individuals would do relative to this type of thing.

4 And, like I say, I think I went the extra mile in good  
5 faith, kept going on and on and on. And had it not been for my  
6 action we may still be sitting there today and I may still be  
7 talking to him, you know, and it's just -- how long is it going  
8 to go on.

9 Q. Well, if in fact you thought there might be some exposure  
10 under 1695, wouldn't that have gone into your calculation of  
11 giving him another 90 days?

12 A. If not for that being waved above my head, I probably would  
13 not have given him the additional 90 days.

14 Q. I'm going to ask you to take a look at Exhibit 1.

15 A. When you refer to these, these are always in your book?

16 Q. In our book.

17 A. Okay. Okay.

18 Q. Is that your signature on the last page of Exhibit 1,  
19 verifying the answers to my requests for production of  
20 documents?

21 A. Okay. There we go. Would that be page 9 -- or --

22 Q. Yes.

23 A. It's your -- it's your 1-10?

24 Q. Correct.

25 A. Okay. Yes.

*Hoffman - Cross/Goodrich*

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1 Q. Take a look at Exhibit 2. Can you identify Exhibit 2 for  
2 the record?

3 A. Are you asking me to identify --

4 Q. Yeah.

5 A. The Preliminary Title Report.

6 Q. Is this a Preliminary Title Report issued in connection with  
7 your purchase of the property for Mr. Lloyd?

8 A. Yes.

9 Q. Take a look at the page...

10 A. There may have been other updates, I don't know.

11 Q. ...2-3.

12 A. 2-3.

13 MR. PAHL: I'm sorry. My pages aren't numbered, Your  
14 Honor.

15 Is that the third page of Exhibit 2?

16 MR. GOODRICH: Correct.

17 THE COURT: It is.

18 BY MR. GOODRICH:

19 Q. Were you aware when you purchased this property from Mr.  
20 Lloyd that there was a notice of default recorded against the  
21 property?

22 A. I would presume I did notice that obviously, yeah.

23 Q. In fact, there were two notices of default according to this  
24 title report, correct? Item 7 and Item 10.

25 A. I see 10 -- oh, yeah, it's on the previous page. That's what

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1 I'm looking for. I see a transfer. I don't - where do you see  
2 the -

3 Q. Item 7, Notice of Default, at the very bottom of page 2.2.

4 A. Oh, okay. Yup, I missed it. You're right. Okay.

5 Q. And, in fact, the funds that you borrowed from Greenpoint  
6 were used to pay off these loans that were in default, right?

7 A. Correct.

8 Q. Take a look at Exhibit 5, please. Is that your signature on  
9 page 5.3, the last page of Exhibit 5?

10 A. Correct.

11 Q. Did you read that paragraph above your signature before you  
12 signed it?

13 A. Yes.

14 Q. And on page 1 of this exhibit it says that the property is  
15 or will be borrower's primary residence; do you see that?

16 A. I do see that, yes.

17 Q. That was not a true statement, was it?

18 A. I was not the one who filled the documents out. I can't  
19 necessarily say that I saw that.

20 Q. Well, that's not my question. My question is: Is that a  
21 true statement, that the property is or will be your -

22 A. No. It's his -

23 Q. - primary residence?

24 A. No, he was - no. He was obviously still a tenant.

25 Q. Okay. And at that point you had no intention of moving into

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1 the property?

2 A. No, that was not my intent.

3 Q. In fact, you never have moved into the property?

4 A. That would be correct.

5 Q. Take a look at Exhibit 6. Do you recognize that document?

6 A. I need to see what it is. Yes.

7 Q. Is that your signature at the bottom?

8 A. Yes, it is.

9 Q. And, in fact, does that accurately reflect the amount of the  
10 mortgage payment to Greenpoint for the Greenpoint loan secured  
11 by the residence that you bought?

12 A. Presumably, yes.

13 Q. Well, you make that payment every month?

14 A. Someone in my office does, yes.

15 Q. Okay. So you have no reason to believe it's not the correct  
16 amount?

17 A. No. I mean it's -- obviously it's printed here, so.

18 Q. Take a look at Exhibit 7. Again, the second page of Exhibit  
19 7, that's your signature?

20 A. Okay.

21 Q. On the first page you say that, "I do solemnly swear that I  
22 am the exclusive fee simple owner of the property and that no  
23 one has questioned our ownership or right to possession."

24 Is that a true statement?

25 Was it true --

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1 A. Well, certainly it was true at that point in time, obvio- --  
2 yeah, absolutely.

3 Q. Well, didn't you already execute a lease giving possession  
4 to Mr. Lloyd and an option giving him a right to buy it?

5 A. Well, obviously these are all simultaneous. So.

6 Q. Take a look at Exhibit 11. I think you testified that the  
7 meeting at Applebee's occurred on July 12th; is that your  
8 testimony?

9 A. I was hazarding a guess and the reason I state that is I  
10 believe -- and, again, the settlement, in the settlement I  
11 believe we started -- was the settlement started on the 12th?

12 Q. You're talking about when the 90 days starts? Would be July  
13 12th.

14 A. Yeah. Yes, July -- yeah, July 12th. And the reason I say  
15 that is because basically we hammered out our deal. One of the  
16 things that was happening when I got back, when I get back to  
17 Blum after several days of not hearing from him, I'm saying,  
18 "Hey, what's going on," again he was dragging his feet, really  
19 not wanting to do the transaction. He was more dragging his  
20 feet. It was both Tom and myself who said, no, we're going to  
21 do.

22 And I stated to Blum that we're not going to play the  
23 game of stretching me out longer and that we're all of a sudden  
24 now be another 30, 45 days down the road, and then we're going  
25 to try to head into an agreement. I said, "We're done stalling.

*Hoffman - Cross/Goodrich*

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1 We're now either going to do it or we're not going to do it."

2 Q. So on -- according to this exhibit the trial date was a week  
3 away at the time you met Mr. Lloyd at Applebee's?

4 A. Correct.

5 Q. Take a look at Exhibit 14. Is that your signature on  
6 Exhibit 14, page 2?

7 A. Yes.

8 Q. And Exhibit 15, is that your signature for H&B Properties on  
9 page 15-2?

10 A. Correct.

11 Q. Did Mr. Lloyd receive any of the money that you received  
12 from NorCal Financial, Inc. --

13 MR. PAHL: I'm going to object, irrelevant in light of  
14 the Court's prior ruling and instructions.

15 THE COURT: Okay. Hold on a second.

16 Which document is this now?

17 MR. GOODRICH: This is Exhibits 14 and 15, basically  
18 the note and deed of trust which were prepared and recorded  
19 after the settlement. If I understand the Court's ruling, it's  
20 fine. We won't go into it, but I just want to preserve for the  
21 record our --

22 THE COURT: I don't want to go into that now.

23 MR. GOODRICH: Okay.

24 THE COURT: Obviously the issue is -- that's a question  
25 of whether there is a breach --

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1 MR. GOODRICH: Correct.

2 THE COURT: - of this.

3 MR. GOODRICH: Right.

4 THE COURT: I won't go into that now.

5 MR. GOODRICH: Okay.

6 THE COURT: That basically has to do with the rights  
7 under the settlement agreement if enforceable.

8 MR. GOODRICH: Right.

9 THE COURT: And when we said enforceable, we meant as  
10 - as I understood the issue, whether it was enforceable as - or  
11 not with respect to the question of being void under - or  
12 voidable under public policy considerations.

13 MR. GOODRICH: Right. Right.

14 THE COURT: Okay. And the statutory considerations,  
15 not performance questions.

16 MR. GOODRICH: I see.

17 BY MR. GOODRICH:

18 Q. On direct examination you identified Exhibit A as the  
19 purchase agreement under which you acquired title. Is that  
20 the -

21 A. You're now referring to...

22 Q. In your -

23 A. You're referring to -

24 Q. - attorney's, yeah, A through -

25 A. Okay. That's - yeah.

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1 Q. Right.

2 A. I presume that's the purchase agreement, is it? Yeah, okay,  
3 I see it. Yes.

4 Q. Is this copy of Exhibit A the complete copy of the purchase  
5 real estate agreement that you entered into with Lloyd?

6 A. I presume.

7 Q. Do you think anything's missing?

8 A. I don't know. I don't know, again, I'm presuming. As a  
9 rule, it would make reference to it if there was an additional  
10 addendum or at least would be. But I would presume they would  
11 have a reference to it, but I don't know that there wasn't  
12 another addendum. I don't know.

13 Q. Just for your reference, if you take a look at Exhibit 18,  
14 that's your proof of claim in this case?

15 A. Okay.

16 Q. And the same contract appears as Exhibit A to your proof of  
17 claim, commencing with pages 18.12 through 18.19. It does not  
18 contain any other pages than those -

19 A. Okay.

20 Q. - contained in Exhibit A.

21 A. Okay.

22 MR. GOODRICH: Your Honor, I'm going to read for the  
23 record from the same transcript starting at page 84, line 15.  
24 The question is: "If you wanted to explain to Mr. Blum at the  
25 time that you were in negotiations with his client that his



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1 theories were not well substantiated, what documents would you  
2 have provided him?

3 "MR. PAHL: That assumes facts not in evidence, so I'm  
4 going to place an objection on the record.

5 "THE WITNESS:" --

6 MR. PAHL: I think it comes time for the Court to make  
7 a ruling since there is now an objection, you can't just read.

8 MR. GOODRICH: Yeah, that's true.

9 THE COURT: The objection's overruled for this  
10 particular context. I understand what relevance it has.

11 MR. GOODRICH: Okay.

12 BY MR. GOODRICH:

13 Q. "THE WITNESS:" -- that's you -- "It would have been verbal. I  
14 would not have, as I say, started the copy machine and sending  
15 off documents. I would have had dialogue with him relative to  
16 why you think so.

17 "QUESTION: What did he say?

18 "ANSWER: The only thing he would keep in mind at this  
19 point in time, I viewed it more as saber-rattling, scaring me  
20 off to maybe make a better settlement. I don't know exactly  
21 what purpose, but he would just say, 'Look, you just got  
22 problems. You got problems. Make no mistake about that.'

23 "QUESTION: So he didn't get specific?

24 "ANSWER: Nope. I don't believe he ever said it was  
25 this document that's hanging you or this. We would have had a

*Hoffman - Redirect/Pahl*

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1 dialogue at that point, I presume."

2 Is that testimony accurate?

3 A. Yes, because that's referring to specific documents. That's  
4 what you're asking there.

5 MR. GOODRICH: I have no further questions, Your  
6 Honor.

7 THE COURT: Okay.

8 MR. PAHL: Mr. Hauser, I think has...

9 MR. HAUSER: Your Honor, I am counsel for Mr. Blum.  
10 About cross-examine, in many respects, Your Honor, I don't know  
11 if I'm really a party to this particular proceeding. Obviously  
12 it's related. Mr. Blum is being sued for recording the Notice  
13 of Rescission, so it's slander of title. Obviously this is a  
14 related issue with the enforceability. But, in any case, Your  
15 Honor, I don't have any questions, so I don't -

16 THE COURT: Okay. That's the only real thing we need  
17 to know.

18 MR. HAUSER: Right.

19 THE COURT: Okay, Mr. Pahl.

20 MR. PAHL: Thank you, Your Honor.

21 THE COURT: Go ahead.

22 REDIRECT EXAMINATION

23 BY MR. PAHL:

24 Q. You were just asked a series of questions - I only have one  
25 area - you were just asked a series of questions, Mr. Hoffman,

*Hoffman - Redirect/Pahl*

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1 which related to whether the purchase agreement was complete.

2 And my question to you is: If a notice of a right of rescission  
3 would be provided to a client under California Civil Code  
4 Section 1695, would that necessarily be a part of a purchase  
5 agreement?

6 MR. GOODRICH: Objection, calls for a legal conclusion  
7 and it's beyond the scope of this proceeding.

8 MR. PAHL: It's directly related to the  
9 cross-examination and it goes to what his practice is as to  
10 whether that would be attached or a separate document. I don't  
11 know why - how it's either irrelevant or -

12 THE COURT: His - I think it's relevant to his state  
13 of mind at all these different times. Not that he's an  
14 authority on it.

15 MR. PAHL: I understand that.

16 THE COURT: I'm not taking him as an authority. What  
17 was his understanding at the time that he -

18 THE WITNESS: Are you referring to the Notice of  
19 Cancellation?

20 BY MR. PAHL:

21 Q. Yes.

22 A. Okay.

23 Q. The Notice of Right to Cancel.

24 A. Okay. It would have been a part of the documents and it  
25 wouldn't necessarily be attached or made reference to. In fact,

*Hoffman - Recross/Goodrich*

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1 I don't think it would necessarily be made reference to in the  
2 body of the contract, no.

3 Q. So it wouldn't be -- it wouldn't be an attachment to the  
4 purchase contract?

5 A. No, not per se.

6 Q. And it wouldn't necessarily be referenced in the purchase  
7 contract, to your understanding?

8 A. That -- right. Correct.

9 Q. It would just be a separate document in the body of  
10 documents?

11 A. Yes.

12 Q. Much like the option agreement was a separate document?

13 A. Correct. Because it's something separate that he's going to  
14 have -- if he wants to rescind, he's got it. He signs it, sends  
15 it back, or whatever.

16 MR. PAHL: No further questions. Thank you, Your  
17 Honor.

18 THE COURT: Redirect -- or recross, rather. Sorry.

19 RECROSS EXAMINATION

20 BY MR. GOODRICH:

21 Q. Well, let's see. You've testified that you, before this  
22 whole transaction, knew about Section 1695 of the Civil Code,  
23 correct?

24 A. Correct.

25 Q. And that you discussed this with counsel?

*Hoffman - Recross/Goodrich*

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1 A. No. When I said I discussed this with counsel, was prior to  
2 the settlement. And we're not talking years prior. We're  
3 talking about during the negotiations, if you will, if you call  
4 them negotiations between the three people involved.

5 Again, like I say, I didn't -

6 THE COURT: You've gone into this. I think you're  
7 outside the scope of the -

8 MR. GOODRICH: Okay.

9 THE COURT: - redirect.

10 MR. GOODRICH: Well, the - I guess my -

11 THE COURT: The only question was was it - would it be  
12 included in that document.

13 BY MR. GOODRICH:

14 Q. Why would it not be included when the law says - the law  
15 that you read says it has to be attached and the notice has to  
16 be next to the equity seller's signature?

17 A. Okay. Does that mean a paperclip, staple? You know, keep  
18 in mind what the document looks like. It's a single-page  
19 document, if I'm not mistaken. I've got to go back to look, but  
20 I believe that's what it is, a single-page document, certain  
21 font, certain size. It's a document that stays with the seller  
22 and the seller has the right to rescind by writing his name down  
23 and saying, 'I rescind it,' and sends it back. And the  
24 transaction's done. It's over. We - it doesn't move forward.

25 Q. This was the first transaction, wasn't it, that you had

*Hoffman - Recross/Goodrich*

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1 under 1695?

2 A. I don't know that.

3 MR. GOODRICH: Bear with me, Your Honor. I have a  
4 citation to the deposition on this issue.

5 Well, I don't think it's that important.

6 THE COURT: Any further questions?

7 MR. PAHL: No further questions.

8 THE COURT: Okay. Thank you, Mr. Hoffman. You may  
9 step down.

10 (Witness excused.)

11 THE COURT: Who's your next witness?

12 MR. PAHL: Ms. Gustavson. I think we can get her done  
13 before the lunch break, Your Honor.

14 THE COURT: Okay.

15 MR. PAHL: She's going to be very short.

16 THE COURT: Let's do that.

17 MR. HOFFMAN: Do you want me to leave all of these  
18 documents?

19 THE COURT: Please do. Yes. Thank you.

20 MR. HOFFMAN: Okay.

21 THE COURT: Thank you.

22 All right. Would you raise your right hand, please?

23 JULIE GUSTAVSON, PLAINTIFF'S WITNESS, SWORN

24 THE WITNESS: I do.

25 THE COURT: Please be seated and state your name for

*Gustavson - Direct/Pahl*

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1 the record and address, either business or home, whichever you  
2 prefer.

3 THE WITNESS: Okay. My name is Julie Gustavson.  
4 G-u-s-t-a-v-s-o-n. Address 2720 Holland Avenue, Clovis,  
5 California.

6 DIRECT EXAMINATION

7 BY MR. PAHL:

8 Q. Good morning, Ms. Gustavson. You're currently licensed as  
9 an attorney in the State of California?

10 A. Yes.

11 Q. And you're affiliated with H&B Properties as their counsel?

12 A. Yes.

13 Q. And you work on a retainer with them?

14 A. Yes.

15 Q. I want to direct your attention to just one aspect and that  
16 is Exhibit G, which hopefully Mr. Hoffman left up there. Do you  
17 have that in front of you?

18 A. I'm sure I can find it. Yes.

19 Q. Were you aware that Mr. Hoffman was meeting with Mr. Lloyd  
20 at the Applebee's?

21 A. Yes.

22 Q. Did you know about that before the meeting?

23 A. Yes.

24 Q. I don't want to know what you and Mr. Hoffman obviously  
25 talked about. After the meeting at Applebee's were you provided

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1 instructions to begin drafting a settlement agreement?

2 A. Yes, I was.

3 Q. Is Exhibit G your -- not the final product but the initial  
4 draft. Is Exhibit G your work?

5 A. Partially.

6 Q. Okay. And would you explain to me what partially means?

7 A. I drafted an initial settlement agreement, forwarded my  
8 draft to Mr. Blum, who made some requests for changes. We  
9 discussed the requested changes and incorporated the ones in  
10 that we could both live with.

11 Q. And so basically it was you and Mr. Blum who drafted this  
12 agreement jointly in the end?

13 A. That is correct.

14 Q. This is the resulting work product, is the product of both  
15 of your work?

16 A. Yes.

17 Q. Did Mr. Rothbard participate in the drafting of the  
18 settlement agreement?

19 A. No. I don't believe he saw it until it was completed.

20 Q. Okay. And prior to -- were you involved in any unlawful-  
21 detainer proceeding that was being handled by Mr. Rothbard?

22 A. No.

23 Q. During the settlement negotiations with Mr. Blum, did you  
24 have conversations with him concerning either the home equity  
25 sales contract -- Home Equity Sales Act or Civil Code 1695?



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1 A. Yes.

2 Q. On how many occasions -

3 THE COURT: Okay. Her discussions with whom?

4 MR. PAHL: Mr. Blum, counsel for Mr. Lloyd.

5 BY MR. PAHL:

6 Q. On how many occasions did you have such a discussion that  
7 you can recall?

8 A. Such a discussion with regard to the 1695?

9 Q. Yes.

10 A. Probably four or five.

11 Q. And what did Mr. Blum say concerning Section 1695?

12 A. Prior to settlement discussions - I should say prior to the  
13 meeting between Mr. Hoffman and Mr. Lloyd, Mr. Blum indicated  
14 his belief that there were several violations of 1695 on the  
15 part of Mr. Hoffman or H&B Properties, whichever, at the time of  
16 the acquisition. And he gave the opinion that the five-day  
17 rescissionary right had not been properly done. And I believe  
18 that he indicated that he did not think the paperwork, aside  
19 from the - the 1695 rescissionary period, had been done  
20 properly.

21 Q. And I assume you didn't agree with him?

22 A. I did not agree with him.

23 Q. Okay. When you drafted the Settlement and Mutual Release  
24 agreement, did the topic of Civil Code 1695 or the Home Equity  
25 Sales Contract Act come up during those dialogues also?

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1 A. It came up during those dialogues not so much as in a  
2 provision for the agreement as much as he continued to state  
3 that he believed that his client should go after rescission of  
4 the contract under 1695, that he did not believe that the  
5 settlement was the best thing for his client.

6 Q. And you obviously didn't agree with him on that either?

7 A. Of course not.

8 Q. Page 2 of Exhibit G contains a 1542 release?

9 A. Yes.

10 Q. You intentionally put that in there?

11 A. Yes.

12 Q. And why did you intentionally put a 1542 release in there?

13 A. I intentionally put it in for the purpose of eliminating any  
14 and all claims whether known or unknown at the time of the  
15 settlement.

16 Q. And is that your standard practice?

17 A. Yes, it is.

18 Q. Okay. Directing your attention on the recitals to  
19 subparagraph G, where it indicates the answer?

20 A. Yes.

21 Q. Do you have that in front of you?

22 A. Paragraph G? Yes.

23 Q. Yes. Of the recitals on page 6.

24 A. Yes.

25 Q. Did you type that sentence in there?

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1 A. I typed it in, but I do not believe it was something that I  
2 put in originally. I believe that that was something that  
3 opposing counsel actually wanted in.

4 Q. So Mr. Blum -

5 THE COURT: I'm sorry. I'm a little behind here.

6 MR. PAHL: No problem.

7 THE COURT: What are we speaking of?

8 MR. PAHL: We're on - Your Honor, we're on page 2,  
9 subparagraph G of the recitals, which makes reference to the -

10 THE COURT: Yes, I remember. Thank you.

11 MR. PAHL: Okay. And -

12 THE COURT: I was just a little behind.

13 MR. PAHL: No problem.

14 BY MR. PAHL:

15 Q. And it's your testimony, Ms. Gustavson, that the  
16 subparagraph G was actually added by Mr. Blum?

17 A. To the best of my recollection, yes.

18 Q. Did you have - other than - you had - let me make sure I get  
19 this right.

20 You indicated you had four conversations with Mr. Blum  
21 that you recall where the issue of home equity sales contract or  
22 Section 1695 came up?

23 A. Yes.

24 Q. How many were before the Applebee's meeting and how many  
25 were after, if you can recall?

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1 A. I would say that approximately three were before the meeting  
2 and one or two were after the meeting.

3 Q. So it may have been four or five conversations?

4 A. Correct.

5 Q. Okay. And did you ever speak to Mr. Lloyd?

6 A. No, never.

7 Q. And I assume you had no participation in the underlying  
8 purchase agreement relating to the Elizabeth Street property?

9 A. That is correct.

10 MR. PAHL: I have no further questions. Thank you,  
11 Your Honor.

12 THE COURT: Okay. Cross-exam.

13 MR. HAUSER: Your Honor, the cross-examination I think  
14 is going to go far into the lunch hour, so could we take a lunch  
15 break now? We will not be complete. It's...

16 THE COURT: Okay, that's fine.

17 MR. HAUSER: Thank you.

18 MR. PAHL: Thank you.

19 THE COURT: All right. Let's start at five to 1:00.  
20 Let's limit it to one hour.

21 MR. HAUSER: Okay.

22 MR. PAHL: Thank you.

23 THE CLERK: All rise.

24 (Luncheon recess taken from 11:52 a.m. to 1:03 p.m.)

25 THE CLERK: All rise.

*Gustavson - Cross/Hauser*

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1 THE COURT: Please be seated.

2 All right.

3 (Julie Gustavson, plaintiff's witness, retakes the witness  
4 stand.)

5 THE COURT: Go ahead.

6 MR. HAUSER: Good afternoon, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. HAUSER:

9 Q. Good afternoon, Ms. Gustavson.

10 A. Good afternoon.

11 Q. You're going to have to excuse my cold if you can't  
12 understand me.

13 A. As long as you don't give it to me, I'll excuse it.

14 Q. Okay. How long have you been an attorney?

15 A. Eighteen years.

16 Q. And you are currently on salary with Mr. Hoffman's company?

17 A. No, I'm not.

18 Q. You're not on salary?

19 A. No.

20 Q. How are you paid?

21 A. I am a consultant. I'm paid on a retainer basis.

22 Q. And how does the retainer work, is it a flat fee or do you  
23 provide services and get paid for those services?

24 A. It's a flat fee.

25 Q. Flat fee, okay. And where is your office?

*Gustavson - Cross/Hauser*

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1 A. My office is in Fresno.

2 Q. Okay. And it's the same office as Mr. Hoffman's?

3 A. I have an office at my home as well, but I do spend time in  
4 his office.

5 Q. Okay. Mr. Hoffman testified in his deposition that you  
6 pretty much come into the office almost every day; would that  
7 be -

8 A. That is correct.

9 Q. - accurate?

10 A. Yes.

11 Q. Okay. Could you pay rent to Mr. Hoffman?

12 A. No, I do not.

13 Q. Okay. And many times - do you communicate with people on  
14 your own letterhead?

15 A. From time to time, yes.

16 Q. But many times you communicate with individuals on the  
17 letterhead of J. Edwards Company?

18 A. If I am doing work for Mr. Hoffman or J. Edwards, yes.

19 Q. Okay. And when you communicate with third parties on Mr.  
20 Hoffman's letterhead, do you indicate you're an attorney or you  
21 just sign it your name, "J. Edwards Company"?

22 A. Usually I sign it "Julie Gustavson, General Counsel" for  
23 whichever entity.

24 Q. Did you do that in the case involving Mr. Lloyd and the  
25 property?

*Gustavson - Cross/Hauser*

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1 A. I may have. I have no recollection.

2 Q. Would it surprise you that all your communications didn't  
3 have "General Counsel," you just simply signed as the "J.  
4 Edwards Company"?

5 A. It wouldn't surprise me or not surprise me. I don't know  
6 what I did back then.

7 Q. Take a look at -- I believe --

8 MR. HAUSER: Do we have the exhibit book?

9 THE COURT: Do you have the blue book? You have the  
10 blue book there.

11 THE WITNESS: Is this what you're talking about?

12 THE COURT: I can see it. Yes, nice bright color.

13 BY MR. HAUSER:

14 Q. Yes. Exhibit 17. I don't have a copy of it, but Exhibit  
15 17, what is Exhibit 17, please?

16 A. It's a fax coversheet.

17 Q. Okay. And is there a letter that you've signed in there?

18 A. Yes, there is.

19 Q. Okay. And how did you sign that letter?

20 A. With my name.

21 Q. Okay. Do you indicate you're general counsel?

22 A. No.

23 Q. And how long have you rented space with Mr. Hoffman --

24 A. I didn't indicate that I rented space.

25 Q. Oh, excuse me. How long have you operated out of Mr.

*Gustavson - Cross/Hauser*

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1 Hoffman's office?

2 A. I have been retained by Mr. Hoffman for about a year and a  
3 half.

4 Q. And how long have you been operating out of his office where  
5 you had -- were you located -- you have an office located in Mr.  
6 Hoffman's office, correct?

7 A. I have space that I work from in Mr. Hoffman's office, yes.

8 Q. And how long have you been doing that?

9 A. Since June of 19-- of 2004.

10 Q. And prior to June of 2004 did you work for Mr. Hoffman?

11 A. I was retained in a number of matters for Mr. Hoffman from  
12 my private law firm.

13 Q. And what law firm was that?

14 A. The Law Office of Julie Gustavson.

15 Q. Okay. And where was that law office office located?

16 A. Orangevale, California -- Orangevale, California.

17 Q. Okay. Do you provide any bills to Mr. Hoffman?

18 A. Occasionally.

19 Q. In this matter involving Mr. Lloyd or the property, did you  
20 provide any itemized bills?

21 A. Not to the best of my recollection.

22 Q. Okay. Did you keep any recordkeeping of your time?

23 A. Not to the best of my recollection.

24 Q. Are you aware of a single document involving a written  
25 communication between you and Mr. Blum in which 1695 was



*Gustavson - Cross/Hauser*

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1 referenced?

2 A. I don't know if there was one or not.

3 Q. Have you - before you testified today did you review any  
4 records?

5 A. No.

6 Q. You testified that you believed that you thought that the  
7 clause in, I believe it's, Exhibit G, the settlement  
8 agreement, -

9 A. Yes.

10 Q. - about the defenses was put in there by Mr. Blum?

11 A. That would be my recollection.

12 Q. Why is that? What about -

13 A. Because that is -

14 Q. I'm sorry.

15 A. Okay. Because that is not something I would normally put  
16 in.

17 Q. Why is that?

18 A. That's just not something I would have normally put in. I  
19 would have -

20 Q. Did you -

21 A. - left it that they filed an answer and I would not have put  
22 what their claims were.

23 Q. How did you transmit that settlement agreement to Mr. Blum  
24 in the first draft -

25 THE COURT: Who is this person?

*Gustavson - Cross/Hauser*

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1 MR. GOODRICH: This is Mr. Blum.

2 THE COURT: But he's a party, right?

3 MR. GOODRICH: He's a party.

4 THE COURT: Yeah, okay. So he can stay. That's  
5 right.

6 BY MR. HAUSER:

7 Q. How did you transmit that settlement agreement to Mr. Blum?

8 A. I don't recall. It was either by fax or by mail or by  
9 email.

10 Q. Okay. Would it surprise you that most of your  
11 communications with Mr. Blum with the settlement agreement was  
12 by email? Would that surprise you at all?

13 A. It would surprise me if most of my communication to him was  
14 by email, yes.

15 Q. Okay. Did you look at any transmittal records or the first  
16 draft of the agreement to see if you're correct of who put that  
17 clause in there?

18 A. I have not looked at any documents.

19 Q. Was there any reason why?

20 A. I had no reason to look at any documents.

21 Q. You knew you were going to be testifying today, -

22 A. Yes.

23 Q. - did you?

24 A. Yes. And I'm testifying to the best of my recollection.

25 Q. Okay. Did you think that you had some type of paper trail

*Gustavson - Cross/Hauser*

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1 that one could easily look at to see who put that clause in  
2 there?

3 A. If I did it would be attorney work product and I would not  
4 produce it anyway, so -

5 Q. The communication to Mr. Blum would be attorney work  
6 product?

7 A. Any notes that I had.

8 Q. No. I'm asking about the communication to Mr. Blum; is that  
9 attorney work product?

10 A. No, it is not.

11 Q. Did it occur to you before you came into court today to  
12 testify to look at the first draft that you sent to Mr. Blum to  
13 see who put in that clause?

14 A. As I've already testified, I did not look at anything.

15 Q. But it didn't occur to you to do that?

16 A. No.

17 Q. How come you didn't file the unlawful-detainer action  
18 against Mr. Lloyd?

19 A. I don't do unlawful detainer.

20 Q. What role did you have in the unlawful-detainer action?

21 A. I did not have a role in the unlawful detainer until it came  
22 to settlement.

23 Q. Till it came to settlement. And that was it came to  
24 settlement in, I think, July 9th, July 12th, the Apple- -  
25 Apple...

*Gustavson - Cross/Hauser*

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1 A. Applebee's.

2 Q. Applebee's. Thank you.

3 So that's when it first came to settlement, at  
4 Applebee's?

5 A. As far as I know.

6 Q. Okay. So prior to that you had no role?

7 A. Not in the unlawful detainer itself, no.

8 Q. What role did you have prior to Applebee's meeting?

9 A. With regard to what?

10 Q. Anything involving Mr. Lloyd.

11 A. Involving Mr. Lloyd. I had discussions with Mr. Blum. I  
12 had discussions with my client.

13 Q. What was the first discussion you had with Mr. Blum?

14 A. I don't recall as I'm sitting here.

15 Q. You don't recall. Was it before the unlawful-detainer  
16 action was filed?

17 A. I believe so, but I can't say for sure.

18 Q. And what was the subject matter of that first conversation,  
19 before the unlawful-detainer action was filed -

20 A. I don't recall.

21 Q. What?

22 A. I don't recall.

23 Q. You don't recall that conversation?

24 A. No, I don't.

25 Q. You don't recall anything said in the first conversation?

*Gustavson - Cross/Hauser*

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1 A. I could not tell you what was said in any specific  
2 conversation, no.

3 Q. How did you have this conversation with Mr. Blum?

4 A. On the telephone.

5 Q. Okay. Who called who?

6 A. I don't recall.

7 Q. Okay. How did you get Mr. Blum's telephone number -- well,  
8 you don't know if you -- he may have called you, right?

9 A. Yes, he may have.

10 Q. Do you know why you -- and you don't know why you were having  
11 this contact with Mr. Blum?

12 A. I would have to guess.

13 Q. Okay. Well, we don't want you to guess. So in at least the  
14 first contact, you don't recall anything that was said?

15 A. I don't recall the specifics of the conversation.

16 Q. All right. Do you recall how long that conversation lasted?

17 A. No.

18 Q. Do you recall where you were when that conversation took  
19 place?

20 A. I could only presume I was at the office at J. Edwards  
21 Company.

22 Q. Okay. Was it during the week?

23 A. I wouldn't be talking to him on the weekend, so it must have  
24 been.

25 Q. Okay. All right. And do you know how long that

*Gustavson - Cross/Hauser*

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1 conversation lasted?

2 A. No idea.

3 Q. Okay. Do you have any notes of that conversation?

4 A. I don't know whether I have notes or not.

5 Q. So you didn't look at your file to see if you had any notes?

6 A. No, I did not look at my file.

7 Q. Would it have been your practice to make notes of that  
8 conversation?

9 A. Typically I do make notes of the conversations.

10 Q. Okay. Do you believe that you made any notes of any  
11 conversation that you had with Mr. Blum?

12 A. I may have. I don't know.

13 Q. Do you know the reason why you didn't follow your normal  
14 practice in making notes?

15 A. I - I didn't say that I didn't follow my normal practice.

16 Q. Okay. Are you aware that documents were produced in this  
17 litigation and there was no privilege log involving any -  
18 identifying any document involving notes of conversations you  
19 had with Mr. Blum?

20 A. I am not a party to this litigation. At no time was - were  
21 any documents subpoenaed for me.

22 Q. But you - so where do you maintain your files?

23 A. My files are maintained at my house.

24 Q. How about when you're writing letters as J. Edwards Company?

25 A. That would be logged in the file according to whatever J.

*Gustavson - Cross/Hauser*

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1 Edwards file it is.

2 Q. Okay. So if you had notes and you kept them in J. Edwards -  
3 if you had notes of your conversation, would you keep them in  
4 any of the J. Edwards file?

5 A. No, I would not.

6 Q. You would not.

7 A. No.

8 Q. How about letters that you sent out as name - as a J.  
9 Edwards Company letter, where would you keep that letter?

10 A. If it's not a privileged communication it would go in the J.  
11 Edwards file.

12 Q. Okay. If it was a privilege communication where would you  
13 do it?

14 A. I would keep it.

15 Q. Okay. Did you inform anybody that you had notes of any  
16 conversations with Mr. Blum?

17 A. No.

18 Q. Okay. Did anyone ask you, including Mr. Hoffman or Mr.  
19 Hoffman's lawyer here, ask you if you had notes of conversations  
20 with Mr. Blum?

21 MR. PAHL: I assume - I have allowed this long enough.  
22 There is an attorney-client privilege here.

23 MR. HAUSER: Well, Your Honor, -

24 MR. PAHL: Any communication I've had with Ms.  
25 Gustavson would be privilege.

*Gustavson - Cross/Hauser*

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1 MR. HAUSER: Your Honor, I'll submit -

2 THE COURT: Why not -

3 MR. HAUSER: - for the record that we received no  
4 privilege log of any documents involving notes of communications  
5 between Ms. Gustavson and Mr. Blum. And so I think based on  
6 that I don't think any records exist. And I think that's the  
7 point of the line of the questioning.

8 THE COURT: Well, there haven't been any introduced to  
9 this point and she says she didn't bring any along, so I don't  
10 think we have any evidence in here.

11 MR. HAUSER: Okay. But -

12 THE COURT: That's for sure.

13 MR. HAUSER: I just want to know if anything exists.  
14 All right.

15 BY MR. HAUSER:

16 Q. Okay. Now your first contact - the unlawful-detainer action  
17 was filed on June 2nd of 2005, I believe; is that your  
18 understanding? Do you have a recollection -

19 A. I don't recall.

20 MR. PAHL: Objection, misstates the - excuse me -  
21 misstates the document that's in evidence.

22 MR. HAUSER: Well, whatever -

23 MR. PAHL: There is no evidence that it was on June  
24 2nd of 2005. I can only assert that's an attempt to mislead the  
25 Court.



*Gustavson - Cross/Hauser*

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1 THE COURT: It was 2004.

2 MR. PAHL: The document says June 2nd -

3 MR. HAUSER: 2004. I'm sorry, Your Honor.

4 THE COURT: 2004.

5 MR. HAUSER: Wasn't an attempt to mislead. It was my  
6 error.

7 BY MR. HAUSER:

8 Q. All right. Now prior to June of 2004, what was your role in  
9 this transaction involving Mr. Lloyd and Mr. Hoffman?

10 A. I didn't have a specific role in that transaction.

11 I'm - just stuck here.

12 Q. Okay.

13 A. I'm too close to this.

14 I didn't have a role in that specific transaction or  
15 specifically in that transaction except to advise my client as  
16 he had the need.

17 Q. Well, I'm just trying to figure out why you would have  
18 contacted or why you had contact with Mr. Blum prior to June of  
19 2004.

20 A. I presume I responded to an inquiry from him. I don't know.

21 Q. Okay. But you're not sure?

22 A. I am not sure.

23 Q. Okay. All right. So you had - you recall at some point  
24 prior to the Applebee meeting, can you recall any specific  
25 conversation that you had with Mr. Blum?

*Gustavson - Cross/Hauser*

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1 A. Prior to the Applebee's. I can't say specifically that it  
2 was - I can't recall a specific conversation. I recall two or  
3 three conversations before the settlement was reached, -

4 Q. Well, you tes- -

5 A. - which would have been prior to Applebee's.

6 Q. Okay. You testified before the lunch break you were pretty  
7 sure it was three. You didn't say two or three, -

8 A. I -

9 Q. - you said three.

10 A. No. You're misstating my testimony. He said three after I  
11 had said four or five. And he said three.

12 Q. Okay. So you recall two or three specific conversations  
13 prior to the Applebee meeting between Mr. Lloyd and Mr. Hoffman?

14 A. Yes. I don't recall -

15 THE COURT: Two or three prior to Apple- -

16 MR. HAUSER: Yes.

17 THE COURT: Prior to Applebee's, the restaurant?

18 BY MR. HAUSER:

19 Q. Is that your testimony?

20 A. Yes.

21 Q. Okay. Tell me about the first conversation you recall.

22 A. I don't know which conversation was which. All three  
23 conversations are more or less jumbled up in my memory. There  
24 were two or three conversations. I can tell you what the gist  
25 of all of the conversations were together.

*Gustavson - Cross/Hauser*

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1 Q. Okay. Well, let me ask you the question: Did you - in any  
2 of these conversations did you initiate the contact?

3 A. I may have.

4 Q. But you don't recall?

5 A. I don't recall.

6 Q. Well, let's take the first one that you recall. What was  
7 the subject matter of that first?

8 A. The subject matter would have been, to the best of my  
9 recollection, the fact that my client was allegedly in violation  
10 of 1695 and the transaction should be voided all together.

11 Q. So your recollection is that it would have been. I mean  
12 would have been or are you sure that this took place?

13 A. I've already told you, I'm not sure of any of the  
14 conversations. I recall generally what was discussed in the  
15 conversations before and after the settlement was reached.

16 Q. Okay. Well, I'm - I'm focusing now before. I'm going to  
17 very specific.

18 A. I understand.

19 Q. Okay.

20 A. And that's what I just responded to.

21 Q. So you can't tell me when or not a certain conversation took  
22 place. You just believe two or three, but they all kind of run  
23 together?

24 A. Two or three prior to the settlement having been reached,  
25 yes.

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*Gustavson - Cross/Hauser*

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1 Q. Okay. And how did 1695 come up in these conversations -

2 A. Mr. -

3 Q. - that you're not sure?

4 A. Mr. Blum indicated that my client was in violation of  
5 Section 1695, et seq.

6 Q. And do you know why - but you don't know how these  
7 conversations initiated. You may have called him?

8 A. I may have called him. I believe that he made the first  
9 contact, I don't recall.

10 Q. Now when you made this phone call to him, if you made the  
11 phone call would it have been on the phone - Mr. Hoffman's phone  
12 or your phone?

13 A. I don't know. Probably on Mr. Hoffman's phone.

14 Q. In a conversation in which 1695 came up for the first time,  
15 how long did that conversation last?

16 A. I don't know.

17 Q. What was discussed in that first conversation when 1695 was  
18 raised?

19 A. I have already told you that.

20 Q. And what's that?

21 THE WITNESS: Do I need to repeat myself again, Your  
22 Honor?

23 THE COURT: Yes. This is a fair question.

24 THE WITNESS: That my client was in violation of 1695  
25 in many regards, one of which was that the paperwork was not in

*Gustavson - Cross/Hauser*

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1 order, another of which was that the five-day rescission was not  
2 done properly.

3 BY MR. HAUSER:

4 Q. And what did you respond?

5 A. That I didn't agree with him.

6 Q. Why didn't you agree?

7 A. For a number of reasons.

8 Q. Why?

9 A. Because I believe that the five-day rescission period was  
10 done properly and the paperwork was in proper order.

11 Q. Did you tell that to Mr. Blum?

12 A. Yes, I did.

13 Q. Did you transmit the -- why did you believe the five-day  
14 cancellation was in proper order?

15 A. Because I looked in the file and found one.

16 Q. Oh, you found one. And did you tell Mr. Blum that you had  
17 that document?

18 A. I don't recall whether I told him or not.

19 Q. Did you send that document to Mr. Blum?

20 A. No.

21 Q. Ms. Gustavson, you're a lawyer. A client -- another lawyer  
22 calls you up and says your client's in violation of 1695 because  
23 he doesn't have this notice, yet you know you have this notice  
24 in your file and it didn't occur to you to send it to Mr. Blum?

25 A. Mr. Blum did not tell me that he did not have the notice.

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Plaintiff's EOR-199

*Gustavson - Cross/Hauser*

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1 He said that the notice was improper.

2 Q. And why did he say the notice was improper?

3 A. You would have to ask him that.

4 Q. But you never sent the notice to him, did you?

5 A. I had no reason to, no.

6 Q. And you never saw -- and where did you see that notice?

7 A. In the J. Edwards file at H&B property --

8 Q. Where in the file?

9 A. In the H&B file for this property.

10 Q. Where would -- a separate document? Was it attached to  
11 anything?

12 A. I have no idea.

13 Q. No idea. How long did this conversation with 1695 come up?  
14 How long did that last?

15 A. I don't know.

16 Q. More than ten minutes?

17 A. I don't know.

18 Q. When, in five minutes?

19 A. I don't know.

20 Q. What else was discussed?

21 A. I don't know.

22 Q. But you -- you don't remember anything else except the 1695?

23 A. That was the gist of the conversation.

24 Q. What else did you speak to Mr. Blum about prior to the  
25 Applebee meeting?

*Gustavson - Cross/Hauser*

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1 A. That was basically it.

2 Q. So in all those three conversations, the only thing  
3 discussed was 1695?

4 A. The violation – the alleged violations of 1695 and the fact  
5 that he thought that the transaction should be terminated –

6 Q. Okay. And that was –

7 A. – avoided.

8 Q. – took place in all three conversations?

9 A. Generally speaking, yes.

10 Q. All right. What else was discussed?

11 A. I don't know.

12 Q. Was that the sole subject of the conversation or is that the  
13 only thing that you remember?

14 A. That's the only thing I remember. I believe there were  
15 other things discussed with regard to potential settlement, but  
16 I don't recall.

17 Q. And how far apart were these conversations?

18 A. I don't know.

19 Q. Days, weeks, months?

20 A. Probably the three – two or three conversations in the space  
21 of two or three weeks.

22 Q. Okay. Now the second conversation when 1695 came up, what  
23 was different about that conversation from the first?

24 A. No different.

25 Q. No difference. Just everyone said the exact same thing over

*Gustavson - Cross/Hauser*

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1 again?

2 A. More or less. I've already told you I don't know  
3 specifically what was discussed.

4 Q. And then the third conversation that you had, the same  
5 thing, everyone just repeated the exact same thing, nothing new?

6 A. More or less, yes.

7 Q. More or less. So you simply repeated yourself for three -

8 A. Exactly.

9 Q. - for three conversations?

10 And at one - and you never sent the cancellation  
11 notice?

12 A. No.

13 Q. Why aren't you claiming that you - so you're claiming that  
14 this whole trial is meaningless because you've complied with  
15 1695?

16 MR. PAHL: Objection. I think that calls for a legal  
17 conclusion on the part of the witness. Also -

18 THE COURT: That's argumentative. Let's try - try  
19 another question.

20 BY MR. HAUSER:

21 Q. Where is that notice, the cancellation notice -

22 A. I have no idea.

23 Q. You have no idea, okay. Is it in evidence here?

24 A. I have no idea.

25 Q. Okay. Now all the conversations that you had, the two or



*Gustavson - Cross/Hauser*

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1 three were on phone. Now after the Applebee meeting you  
2 informed of the settlement, do you recall speaking to Mr. Blum  
3 again?

4 A. I recall speaking to Mr. Blum once the settlement was  
5 reached. I can only presume that was after Applebee's.

6 Q. And by after Applebee's, you discussed 1695 again?

7 A. I believe so, yes. I can't say for certain.

8 Q. You're not sure?

9 A. I'm not positive, no.

10 Q. Okay. So all the conversation about 1695 took place before  
11 the settlement?

12 A. That is not what I said.

13 Q. Okay. Well, what makes you believe that you discussed 1695  
14 after this Applebee meeting?

15 A. I believe we discussed it because Mr. Blum was still trying  
16 to say that we were in violation of 1695. Whether we discussed  
17 the statute or not, I don't know.

18 Q. Well, what did you say to Mr. Blum?

19 A. That the clients had reached a settlement and whether there  
20 were violations or not was immaterial.

21 Q. Okay. So you knew that Mr. Blum was raising 1695?

22 A. Yes.

23 Q. All right. How come you didn't put that in the settlement  
24 agreement?

25 A. Because as far as I'm concerned 1542 covers it. All

*Gustavson - Cross/Hauser*

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1 claims -

2 Q. Well, why did you put the other claim in there to the  
3 settlement agreement, Exhibit G?

4 A. Mr. Blum asked me to, I believe, because it was not my  
5 standard way of - and it wasn't a claim anyway. It's just a  
6 recital.

7 Q. So it was just a recital. It didn't even occur to you to  
8 put - since it was just a recital, to put a full recital in?

9 A. It is a full recital.

10 Q. But it doesn't say 1695?

11 A. So?

12 Q. Why didn't you put - I mean why did you put in one clause  
13 about the - well, take a look at the settlement agreement.

14 A. I can see it.

15 Q. Okay. And please read paragraph G.

16 A. I have read it.

17 Q. All right. Why is that there but not 1695?

18 A. I can only guess because Mr. Blum chose not to put 1695 in  
19 or he didn't think of it either.

20 Q. But you prepared the first draft?

21 A. I prepared the first draft, yes.

22 MR. HAUSER: Your Honor, I have some exhibits that I  
23 want to mark. These will be impeachment exhibits.

24 THE COURT: Okay. Have you marked them? Have copies  
25 for counsel?

*Gustavson - Cross/Hauser*

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1 MR. HAUSER: Yes.

2 Your Honor, it's going to be a group exhibit.

3 THE COURT: How are you numbering yours?

4 MR. GOODRICH: Oh, we could make it next in order on  
5 the defendants' side.

6 THE COURT: Are you offering exhibits jointly, more or  
7 less?

8 MR. GOODRICH: Yes.

9 MR. HAUSER: Yes.

10 MR. GOODRICH: So that would be Exhibit -

11 THE COURT: So it will be 19?

12 MR. GOODRICH: - 19? 19, yes.

13 THE COURT: Okay.

14 MR. HAUSER: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 MR. HAUSER: Thank you.

17 BY MR. HAUSER:

18 Q. Looking at Exhibit Number 19, Ms. Gustavson, this is a -  
19 these are pages of emails received by Mr. Blum. What I want to  
20 know, is that your email address, JulieBeth?

21 A. JVGus13@HotMail.com is my email address at work, yes.

22 Q. Okay. All right. And -

23 THE COURT: I'm sorry. Hold on a said.

24 MR. HAUSER: Just looking at the first page.

25 THE COURT: This was sent, Julie - this JVGus, that's

*Gustavson - Cross/Hauser*

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1 yours?

2 THE WITNESS: Yes.

3 THE COURT: Yeah. Okay. Thank you.

4 BY MR. HAUSER:

5 Q. And do you recall that July 14th was the first time that you  
6 sent a draft of any settlement agreement to Mr. Blum?

7 A. I don't recall that, no.

8 Q. Let's take a look at Exhibit 19, the third page. Can you  
9 see that document there? Again that's your email address,  
10 JVGus13?

11 A. Yes, it is.

12 Q. And that's dated July 14th?

13 A. Yes.

14 Q. And there's attachments talking about a stipulation  
15 settlement agreement?

16 A. Yes.

17 Q. Okay. Does this refresh your recollection that you sent the  
18 settlement agreement to Mr. Blum for the first time on July  
19 14th?

20 A. No. I can see that it says that, but it doesn't refresh my  
21 recollection.

22 Q. Are you aware of any emails or communications prior to the  
23 July 14th, 2004 in which you sent a settlement agreement to Mr.  
24 Blum?

25 A. No.

*Gustavson - Cross/Hauser*

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1 Q. Now I'd like you to take a look at the next series of pages  
2 right after that. This would be page 4 of Exhibit 19. And it  
3 states, "The Settlement and Mutual Release Agreement."

4 THE COURT: I'm confused about something here. "Here  
5 are the drafts." Page 1 is the earliest, right? These go in  
6 chronological order?

7 MR. HAUSER: Yes, Your Honor. It looks like it's  
8 10:58.

9 THE COURT: Yes.

10 MR. HAUSER: See, what happens, if you look at it,  
11 Your Honor, - I'll just briefly explain - if you look at the  
12 various emails, then you get to page 3. Then she says, "Forgot  
13 the attachments," -

14 THE COURT: Yes.

15 MR. HAUSER: - "didn't I," so the first two emails  
16 were sent on the 14th, but didn't have the attachments. And you  
17 can see from the computer printout there's no reference to the  
18 attachments.

19 THE COURT: Yes, I could see that. Okay, the first  
20 one to which there's an attachment is on July 14th at 11:26.  
21 And then there follows a draft of the settlement agreement; is  
22 that -

23 MR. HAUSER: That's correct, Your Honor.

24 THE COURT: Okay. You don't have anything earlier  
25 than that?

*Gustavson - Cross/Hauser*

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1 MR. HAUSER: That's correct, Your Honor.

2 BY MR. HAUSER:

3 Q. Now right behind this third page, the fourth page, we have  
4 the Settlement and Mutual General - Release Agreement, all  
5 right. And if you look - will you please look through those  
6 five pages?

7 A. Done.

8 Q. Okay. Okay. And do you recall getting drafts back from Mr.  
9 Blum in terms of a redline version, the way this was done?

10 A. I don't recall getting it that way, but I may have.

11 Q. Okay. And let's take a look at on page 2 of this draft,  
12 which would be the - I know it's going to confuse - fifth page  
13 of Exhibit 19. Do you see number G, "Whereas Lloyd filed an  
14 answer claiming that the sales transaction was a disguised  
15 security device and thereby unenforceable"? Do you see that?

16 A. Yes.

17 Q. Is there any redline version there?

18 A. No.

19 Q. Does this refresh your recollection that it was you who  
20 included that clause there, not Mr. Blum?

21 A. No. I would presume it was a term that he had given me  
22 before I did this, but it's always possible that it wasn't.

23 Q. Oh, okay. This was - you got this term then before you sent  
24 the settlement agreement?

25 A. We discussed the settlement document before I drafted it.

*Gustavson - Cross/Hauser*

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1 We discussed the terms that would be included in the settlement  
2 document before I drafted the document. My recollection would  
3 be that that was something that he had wanted in it, but I don't  
4 - I can't say for sure.

5 Q. So you don't know. I don't want you speculating.

6 A. I have just said I can't say for sure.

7 Q. Okay. All right. Now when was the Applebee meeting, I  
8 think the testimony was, what, I think earlier, July 12th?

9 A. I don't know.

10 Q. Okay. But within a couple of days of the Applebee meeting  
11 you sent this document; don't you recall?

12 A. I don't recall.

13 Q. Okay. Well, when did this conversation with Mr. Blum about  
14 what's going to be in the settlement agreement take place  
15 between the Applebee meeting and July 14th?

16 A. It took place some time between the time of the Applebee  
17 meeting, which may or may not have been on July 12th, according  
18 to the testimony, and apparently July 14th.

19 Q. How did that communication take place?

20 A. What communication?

21 Q. About the settlement agreement before you sent the draft.

22 A. Presumably he called me or I called him, I don't know.

23 Q. So you really don't know who put that clause in there; isn't  
24 that correct?

25 A. That's what I've said.

*Gustavson - Cross/Hauser*

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1 Q. Okay. So you may have?

2 A. That's correct. I may have. I don't -

3 Q. And Mr. Blum may have asked for it and may not have asked  
4 for it?

5 A. That's correct. Yes.

6 Q. Thank you.

7 Now we've printed out here in Exhibit 19 all the  
8 written communications between you and Mr. Blum. I would like  
9 you to take a look at Exhibit 19 -

10 MR. PAHL: Excuse me. Your Honor, is that a  
11 representation of fact? Because that's not in question -

12 MR. HAUSER: Okay. Well, I'll rephrase it, Your  
13 Honor.

14 BY MR. HAUSER:

15 Q. Please look at Exhibit 19 and tell me if you're aware of any  
16 other written communications between you and Mr. Blum?

17 A. Well, I would have said there would have been communications  
18 on letterhead as opposed to email, but I don't see any in here.  
19 And there might have been. I don't use email very often for  
20 communicating with people.

21 Q. All right.

22 A. I don't like it.

23 Q. Are you aware of any such letterhead communications?

24 A. No.

25 Q. All right.



*Gustavson - Cross/Hauser*

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1 A. I'm just surprised that there aren't any in here. I would  
2 have thought there would have been some.

3 Q. And would it surprise you that no such records were produced  
4 in this litigation?

5 A. Well, it would surprise me if there aren't - if there were  
6 some, they would presumably have been produced.

7 Q. Okay.

8 A. I'm just surprised that there aren't because I don't like  
9 email.

10 Q. So as far as you know, at least for your best recollection,  
11 this represents all the written communications between you and  
12 Mr. Blum?

13 A. As far as I know, yes.

14 Q. Okay. All right. Now in any of these communications did  
15 you see any reference in there to 1695?

16 A. I didn't read the communications and it would take quite a  
17 while -

18 Q. Okay. Well, please take a look.

19 A. How much time do you have?

20 Q. We have all day.

21 THE COURT: You're talking about only the emails?

22 MR. HAUSER: Yes. Obviously it's not in any document.

23 THE WITNESS: (Perusing document.) I don't see a  
24 reference to Section 1395 [sic].

25 BY MR. HAUSER:

*Gustavson - Cross/Hauser*

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1 Q. Take a look at Exhibit - now using these emails, if you can  
2 as a reference point, can you tell me when the conversation you  
3 had with Mr. Blum about 1695 arose after you sent the settlement  
4 agreement?

5 A. After I sent the settlement agreement?

6 Q. You said there was one conversation - well, let me ask you a  
7 question. Maybe I misspoke. You said you had a conversation  
8 with Mr. Blum about 1695 after the settlement. Are you  
9 referring to after Mr. Hoffman and Mr. Lloyd reached a  
10 settlement agreement but before you sent the document or after  
11 you sent the document?

12 A. I'm talking about after Mr. Lloyd and Mr. Hoffman reached an  
13 agreement. I couldn't say specifically where it is with regard  
14 to all this, but I believe it was before we had the settlement  
15 document drafted.

16 Q. Okay. So before you had the settlement document drafted you  
17 believe you had a discussion with Mr. Blum where he claimed that  
18 the transaction was invalid because of 1695; that's your best  
19 recollection?

20 A. That's the best recollection, yes.

21 Q. All right. Now take a look at Exhibit G, paragraph G. Now  
22 as a lawyer is a disguised security device, do you know if that  
23 has any relationship to 1695?

24 A. Yes, it does.

25 Q. And how is that?

*Gustavson - Cross/Hauser*

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1 A. 1695, subsection something or other says that a transaction  
2 that falls within that code section or that chapter is a  
3 mortgage, is deemed a mortgage, which is, in other words, a  
4 disguised security device.

5 Q. So that's how you interpreted that?

6 A. That's what I'm saying that means, just in response to your  
7 question.

8 Q. And what's that understanding based on?

9 A. Reading 1695.

10 Q. And did you read 1695 during this transaction?

11 A. Probably several times.

12 Q. Okay. In your conversations with Mr. Blum did he ever  
13 raise, use the term "disguised security device"?

14 A. I believe that -- I believe that he put it in his answer to  
15 the unlawful detainer.

16 Q. I understand that. But I want to know if that was -- those  
17 terms were discussed with Mr. Blum?

18 A. Oh, I don't recall.

19 Q. Okay. You don't recall if those terms were discussed, but  
20 you recall 1695, but you included "disguised security device,"  
21 but not 1695 in the agreement; is that correct?

22 A. I've answered that several times.

23 Q. That's correct, isn't it?

24 A. Yes.

25 Q. Thank you.

*Gustavson - Cross/Goodrich*

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1 A. So what.

2 CROSS-EXAMINATION

3 BY MR. GOODRICH:

4 Q. Ms. Gustavson, you identified two or three conversations  
5 before the settlement - settlement was reached and then one or  
6 two after. What date are you using for when the settlement was  
7 reached?

8 A. Well, in reading through these emails, I note that the  
9 agreement apparently was reached on July 9th.

10 Q. Okay. So you're saying when the settlement was reached was  
11 when my client and Mr. Hoffman met at Applebee's?

12 A. That is correct.

13 Q. Okay. And I may have missed this when I went downstairs to  
14 help Mr. Blum, but did you confirm any of these conversations  
15 with Mr. Blum about 1695? And I think there were three of them  
16 that you said he repeated over and over 1695. Did you confirm  
17 any of them in writing?

18 A. You mean write back to him, say, 'Confirming our  
19 conversation'?

20 Q. Right.

21 A. No, I did not.

22 Q. That's not your usual practice?

23 A. No, it is not.

24 Q. Is it a concern of yours that a lawyer in your position  
25 representing Mr. Hoffman should have done that?

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*Gustavson - Cross/Goodrich*

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1 A. No.

2 MR. PAHL: Objection. This is not a malpractice case.  
3 We're certainly not dealing with the standard of care in a - and  
4 the issue is whether it was a discussed term. I recognize this  
5 is impeachment, Your Honor, but I'm going to object. Obviously  
6 it's irrelevant and it goes way beyond the scope of the direct.

7 MR. GOODRICH: The question is intended to determine  
8 whether this client - this person is testifying a certain way  
9 because of her concern about a malpractice suit.

10 THE COURT: You can have the question.

11 THE WITNESS: I'm sorry. I didn't hear you, Your  
12 Honor.

13 THE COURT: The objection's overruled. I'm sorry. I  
14 didn't -

15 THE WITNESS: So answer is what you said.

16 THE COURT: Answer the question, yes.

17 THE WITNESS: Okay. No, I'm not concerned about that.

18 BY MR. GOODRICH:

19 Q. Is that because you're in business with Mr. Hoffman?

20 A. No. It's because I don't think that anything that I did was  
21 done improper.

22 Q. But you're in business with Mr. Hoffman, right?

23 A. I'm not in business with Mr. Hoffman. I'm a consultant to  
24 Mr. Hoffman.

25 Q. You only provide legal services?

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1 A. That is correct.

2 Q. But you're president of NorCal Financial Lending Services,  
3 Inc.; is that not true?

4 A. That is true.

5 Q. And NorCal Financial Lending Services, Inc. has its address,  
6 at least according to the public records, at two different  
7 places, one of which is 5132 North Palm Avenue, Suite 103; isn't  
8 that correct?

9 A. That was the address that I used when I started it, yes.

10 Q. And NorCal Financial Lending Services, Inc. is hard-money  
11 lender, right?

12 A. It is a loan brokerage firm.

13 Q. Okay. And don't you receive compensation as president for  
14 loans that are brokered through Mr. Hoffman?

15 A. I do not receive compensation.

16 Q. Do you have any economic interest whatsoever in loans that  
17 are facilitated or brokered by NorCal Financial Services?

18 A. I have an economic interest in that I am the president and,  
19 in fact, I'm the only officer of the corporation. And if  
20 something were to happen, I have some liability issues. But for  
21 - other than that, all the money goes back into the corporation.

22 Q. Okay. And you have no interest in that corporation?

23 A. I do not hold any shares in the corporation.

24 Q. No. Do you have an interest in the corporation?

25 A. I have an interest in it as in that my name is on the

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1 corporation.

2 Q. How about Gusthoff Enterprises, LLC?

3 A. It does not exist any longer.

4 Q. But it did exist at one time, did it not?

5 A. It did exist.

6 Q. And wouldn't it be fair to say that the term "Gusthoff" was  
7 Gustavson and Hoffman?

8 A. Could be.

9 Q. Was it?

10 A. It - no. It could - could be, but, no, it wasn't.

11 Q. Well, what was it then?

12 A. It was just a name that was picked out of the air.

13 Q. It's a limited liability company, correct?

14 A. Yes.

15 Q. And you were a member and a manager of that, correct?

16 A. Yes.

17 Q. Isn't it true that you decided not to go forward once this  
18 lawsuit was filed and you wanted to sever your relationship with  
19 Mr. Hoffman?

20 A. I never had - I have the same relationship now with Mr.  
21 Hoffman as I have ever had, which is retained counsel. I  
22 terminated Gusthoff because I wasn't using it and I didn't want  
23 to pay the \$800 filing fee. So I paid for the two years that it  
24 was active, although never used, and closed it.

25 Q. So who came up with the name Gusthoff?

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1 A. I did.

2 Q. And you don't remember why you came up with the name?

3 A. It just popped into my head.

4 MR. GOODRICH: Just popped in your head, okay.

5 Thank you.

6 THE COURT: That's it?

7 MR. PAHL: Well, Your Honor, I wanted to bring to the  
8 Court's attention, Exhibit 19 appears to have some  
9 attorney-client privilege documents in it. And I'm bound,  
10 obviously, -

11 THE COURT: Yes. They're - there are some -

12 MR. PAHL: - and I'm very concerned about -

13 THE COURT: - some forwarding things.

14 MR. PAHL: If there is not a problem, and I direct the  
15 Court's attention to page 9 of Exhibit 19, where there's  
16 apparently an email from Mr. Blum to Mr. Lloyd where they're  
17 having a conversation about the settlement.

18 THE COURT: Okay.

19 MR. PAHL: Do we want to -

20 THE COURT: What -

21 MR. PAHL: Is this - is this deemed a waiver?

22 THE COURT: What page is what?

23 MR. PAHL: It's the ninth page of the exhibit that I  
24 was handed.

25 THE COURT: Well, -



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1 MR. PAHL: God knows - God knows, -

2 THE COURT: - they aren't numbered.

3 MR. PAHL: I know. I just counted. It's the one with  
4 an email, Your Honor, -

5 THE COURT: What's the date and time?

6 MR. PAHL: July 14th at 11:38 a.m.

7 THE COURT: I have 11:38, yes.

8 MR. PAHL: If there's a waiver, I'm game and I'll take  
9 it. But I'm duty bound to advise the Court.

10 MR. GOODRICH: I'm not seeing it here. Oh, I see it.

11 THE WITNESS: It's immediately following the  
12 settlement agreement.

13 MR. HAUSER: Your Honor, that was inadvertent.

14 MR. GOODRICH: Yeah, I did not see this before it was  
15 submitted. It came directly from Mr. Blum when he walked into  
16 the court this afternoon.

17 Let me just take a look.

18 MR. PAHL: Well, Your Honor, for the record I would  
19 object, but we're not going to be able to unring the bell. So I  
20 think it's an inadvertent disclosure by counsel - I mean I did  
21 not produce this and did not have an opportunity to talk to my  
22 client about it. But I, quite frankly, -

23 THE COURT: All right. Well, I've already seen it.

24 MR. PAHL: Right.

25 THE COURT: But I will - I have to consider whether I

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1 should consider it. I will note your objection.

2 MR. PAHL: Thank you.

3 I have no further questions.

4 THE COURT: Okay. Thank you, Ms. Gus- -

5 MR. PAHL: We'll call Todd Rothbard -

6 THE COURT: Ms. Gustavson, you may step down. Thank  
7 you.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. PAHL: We'll call Todd Rothbard at this time.

11 THE COURT: All right.

12 THE CLERK: Raise your right hand, please.

13 TODD ROTHBARD, PLAINTIFF'S WITNESS, SWORN

14 THE WITNESS: I do.

15 THE CLERK: State your full name for the record,  
16 please.

17 THE WITNESS: My name is Todd Rothbard. Last name is  
18 spelled R-o-t-h-b-a-r-d. My work address is 4261 Norwalk Drive,  
19 Suite Number 107, San Jose. The Zip Code is 95129.

20 THE COURT: Please go ahead.

21 MR. PAHL: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. PAHL:

24 Q. And, Mr. Rothbard, like pretty much everyone else in this  
25 case, you're an attorney licensed to practice law in the State